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DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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House Bill 6173-6 (As Introduced)

Topic: Contractors
Sponsor: Representative Farrah
Co-sponsors: None
Committee: House Regulatory Reform

Date Introduced: May 22, 2008

Date of Summary: June 4, 2008

The bills amend four statutes dealing with construction of public buildings.

House Bill 6173 amends Public Act 213 of 1963. It requires that the construction manager furnish the governmental unit performance and payment bonds. The amount of the bonds would be determined by the governmental unit and would be between 24% and 100% of the contract amount. Contracts of \$50,000 or less would be excluded. In an action brought under the provisions of the bill, the prevailing party is entitled to recover reasonable costs and attorney fees from the non-prevailing party. If it is determined that there was no good faith basis for non-payment, the claimant is entitled to recover interest at a rate of 12%.

House Bill 6174 amends Public Act 57 of 1998 to include contracts between a contractor and a construction manager in the requirements of the act. A contract would be required to include information representing, depicting, describing, or concerning physical conditions, present on, in, or under the site, or information from which such conditions can be reasonably derived, which was offered to bidders prior to the submission of bids. Any contract provision purporting to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performance due to acts or omissions by the governmental entity or construction manager is void and unenforceable.

House Bill 6175 amends Public Act 524 of 1980 to include construction managers in the act's provisions related to timely payment. Construction managers would be required to submit a payment request within the time specified in the contract or within 15 days, whichever is earlier. The maximum retainage is decreased from 10% to 5% of dollar value. The retainage must be reduced to not more than 1% once the project is 90% complete. The maximum retainage may not be increased by contract provisions or procedures deferring all or a portion of a payment beyond the time specified in the act or by requiring additional security. Current language requiring release of the retainage plus interest only if an irrevocable letter of credit is provided is deleted. Failure to return the retainage as provided in the act would entitle the contractor to recover interest at twice the rate payable on money judgments. The dispute resolution procedure provided in the act is optional for the contractor. A prevailing contractor is entitled to recover \$500 or the reasonable actual costs and attorney fees, whichever is greater. In a circuit court proceeding the prevailing party is entitled to recover reasonable costs and attorney fees.

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House Bill 6176 amends Public Act 259 of 1931 by amending the title of the act and including construction managers in the act's provisions relating to trust fund fraud. The amount of the fine is changed from not less than \$100 or more than \$5,000 to 50% of the amount of the trust funds at issue. A contractor, construction manager, or subcontractor who retains the proceeds of any payment made that was intended for laborers, subcontractors, and suppliers engaged in the project is liable for civil action. The court is required to award the prevailing party \$500 or the reasonable actual costs and attorney fees in such a civil action.

The bills are tie-barred and take effect January 1, 2009.